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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.C. et al., Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALEXANDER C.,

Defendant and Appellant.

B207901

(Consolidated with B207911)

(Los Angeles County Super. Ct. Nos.
CK70294 and CK70295)

APPEAL from orders of the Superior Court of Los Angeles County.

Marilyn Mackel, Juvenile Court Referee. Affirmed.

John Cahill, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant
County Counsel, and Melinda White Svec, Deputy County Counsel, for Plaintiff and
Respondent.

SUMMARY

In this appeal, the father says he was denied due process at the adjudication hearing because the trial court relied on evidence outside the record. Because this claim lacks merit, we affirm the trial court's orders.

FACTUAL AND PROCEDURAL SYNOPSIS

On October 10, 2007, the Department of Children and Family Services (Department) filed two petitions pursuant to Welfare and Institutions Code section 300, alleging domestic violence between the father and mother and further alleging the father had physically abused the mother and his ten-year-old daughter.¹ One petition relates to the father's and mother's three biological children (then, ages 4, 3, and six months). The other relates to the father's ten-year-old daughter; the father obtained custody of this child shortly after her birth, and she lived with her father and stepmother (the mother of the three younger children).²

According to the report prepared for the detention hearing, the Department had received a referral on August 23, after the mother was taken to the hospital by ambulance the day before, following a physical altercation with the father in front of the children. It was reported that the ten-year-old had gone to the neighbors and asked them to call 9-1-1 because her father was dragging her stepmother who was naked. The father was arrested.

¹ All undesignated statutory references are to the Welfare and Institutions Code.

² Our references to the mother in this opinion are to the mother of the three younger children who is also the stepmother to the ten-year-old girl. The girl reported living with her stepmother from the age of about seven and referred to her as her mother; she told the social worker she "d[id]n't know her real mother," and the biological mother did not participate in these proceedings. The mother and stepmother are not parties to this appeal. (Although we would ordinarily use initials in our opinion, the father, the ten-year-old girl and the youngest child share the same initials, and the mother and four-year-old share the same initials as well.)

The neighbor told the investigating social worker the girl had returned the day after the incident and said she “had made up the story, that all that really didn’t happen.”

Attached to its report for the detention hearing, the Department provided the court with a copy of the police report prepared on August 22. According to the police report, the mother was laying on the floor and being treated by Fire Department personnel when officers attempted to speak with her. She said “nothing happened” and was “uncooperative” with police. The father also said “nothing happened” and “denied the entire incident.” The ten-year-old girl told the officers she saw her father grab her mother by the arm and drag her down the stairs. Fearing for her mother’s safety, she ran upstairs, opened the window, pushed out the screen and climbed down a pole near the window.³ She ran to her neighbors’ house, and the neighbors called police. The neighbor told the officers the girl had said her father dragged her mother down the stairs; the girl “seemed scared” and the neighbor believed her so the neighbor called the police. The father was arrested for spousal battery. (Pen. Code, § 243, subd. (e)(1).)

On August 27, the social worker spoke with the girl who said “I can’t quite remember, there was just a little arguing My mom had a headache, was feeling weak and went outside to get some air, and we didn’t know the door was locked; my dad was yelling and told us kids to go upstairs, my dad gave my mom clothes. I was really scared, so I went to my next door neighbors and asked them for help and then I saw the police and ambulance come.”

She said her father “gets mad and starts hitting people.” Pointing to her lower back, she said he hit her there “last Saturday.” “[M]y father was hitting my mother, he was socking her in the stomach, she was crying and I kept trying to stop him and then he hit me, it didn’t make me cry and it didn’t hurt. I cried seeing my mom get hit. He kept telling me get back, get back.”

³ In their police report, the officers noted the screen lying on the roof below the window of the upstairs bedroom.

The four-year-old told the social worker her older sister called the police “because my daddy was dragging my mommy upstairs.” She also said her father “slaps” her.

The father told the social worker, “Look miss, this is a family matter, it’s personal[. A]s you can see, I have happy kids, I give free rein to my kids, my family feels safe and I am forthright. I get intervention through my Pastor on what to do with my kids and I know how to control my anger.”

On September 28, the social worker spoke with the mother by telephone. She reported another altercation with the father. She said the father had given her some money which she used to buy shoes for the children and food for the house; she put the rest in the bank. Father later asked for the money back. She told him she did not have it and told him how she had spent some of it. He said she had to give back the money. She said when she was on the way to the bank with the father following in another car, he bumped her with his car when she stopped. At the bank, he told some man “she stole my money,” and when the father followed her back to the house, he was yelling, “You about to die now.” The mother filed for a restraining order as advised by police. She left with the children and went to her sister’s house after the father left for work.

On October 1, the mother told the social worker she was “afraid” of the father and said the ten-year-old was a “hero.” When the father was hitting the mother in the stomach, she said, the girl “broke a window and got out on the roof and went for help. She is a brave girl.” She said the father had cut off the car insurance and was going to sell the car. She was worried about transportation for the children and about money, but she had gone to the welfare office. She said she wanted the father to “get some counseling.”

The social worker told the mother the children could not go home; if she returned, the children could be detained from her as well, placed instead with an aunt or in foster care. She said she understood. “My kids, I love them, they are priority.”

The ten-year-old said she did not interact with her father much—he worked two jobs during the week. “I don’t really love my dad. I would visit him but I would be

afraid he wouldn't give me back to my mom. . . ." She said her father had hit her in the past as discipline. When the social worker told the girl about monitored visits, she said "I want that I'm scared because I don't want my dad to come here (school) and take me, I'm scared for my mom, I can't concentrate in class." She said her father was on the phone with her mother the day before and, by the tone of his voice, "he was mad." She said she felt safe with her mother living at her aunt's house.

On October 4, the social worker spoke with the father by phone, indicating the children would be detained from him due to domestic violence. He "gave a little laugh" and said he would call the social worker the next day but did not do so.

In its report, the Department also advised the court the father had a 1987 Penal Code section 273.5 violation for infliction of corporal injury on a spouse or cohabitant.

On October 10, the dependency court detained the children from the father, releasing them to the mother, and issued a temporary restraining order against the father. After an October 24 hearing, the court issued a permanent restraining order against the father (in effect for one year). The adjudication hearing was scheduled for November 21.

In its Jurisdiction/Disposition Report for the adjudication hearing, after conducting further interviews, the Department advised the court the father and mother were married in Nigeria in 2002. Both were born in Nigeria. In the mother's family, the father could have more than one wife, and she had 21 siblings. She moved to the United States in 2003. The father had been a teacher for twenty-one years.

On November 19, the investigating social worker (Marla Aceves) interviewed the father. On August 22, he said, he and his wife were having an argument that was louder than usual. He wanted her to come with him to see a pastor for help with discord in their marriage. He said he told her to get dressed. She refused to go with him. She said she had a headache, he gave her some medication and water and she spit it out. He said he was "still insisting that she get dressed and it got louder." He "collected [him]self" and was sitting down with her when the police arrived. He denied grabbing her by the arms,

dragging her or hitting her. He said the conflict was with the aunt, not him. “I keep telling [the mother] to distan[ce] herself from her sister. . . .”

The ten-year-old girl said: “A really big fight happened and they [police] said we couldn’t stay there anymore so we came here [to the aunt’s house]. I saw yelling. The fight was at home in the living room. I was in the same room. There was screaming, yelling, confusion, fighting, pushing. He grabbed her arm and dragged her downstairs. I never seen my parents have a big fight like that before. I ran outside and he took me back inside.” By the social worker’s description, the girl was “hesitant” to answer questions, speaking “very softly” and often looking over in the mother’s direction. She often asked, “[W]hat’s the question again?” Without answering the question asked, she would say, “Next question.” When the social worker reviewed the girl’s prior statements with her, she said she “might not have meant to say it that way or she didn’t understand what was asked of her.” She said she “[j]ust didn’t want to say what happened.”

The mother said she and the father had an argument. “He started pulling me with his hand up the stairs to put on my clothes,” and the next thing she knew the police were there. She thought something was wrong with the children, and they took her to the hospital. She said the father “complains that I talk to my sister and people too much. He is always saying stop talking to your sister.” She said he was trying to get the phone from her; he didn’t punch her. She said it was “one incident,” “only one incident.”

In the social worker’s view, the father had minimized the events, and the mother and ten-year-old girl had retracted or minimized their prior statements. She noted, however, that although both the mother and girl downplayed or denied the domestic disputes, both wanted the father to participate in anger management classes. The Department recommended that the children remain removed from the father’s custody, with family maintenance services for the mother and reunification services for the father, including a Department-approved counseling program to address anger management, marital conflicts and domestic violence.

The adjudication hearing was continued to March 6, 2008. On March 5, the Department advised the court the mother was seeking removal of the restraining order against the father so she could talk with him and said she was having difficulty with the girl because she missed her father. The father was attending a domestic violence and parenting program. The hearing was continued to May 6. As of May 1, the father's therapist reported that he was working with the father and he "still ha[d] progress to make." The father had attended 24 sessions of a batterers/parenting/child abuse program.

The adjudication hearing commenced on May 8. The father's attorney called the mother to testify. She said the argument of August 22, 2007, involved finances, and this was the first time they had argued. She denied the father had ever physically abused her or the children, denied he had ever bumped her with his car, said she had sought the restraining order because the social worker had pressured her and said she planned to reunify with the father. The children's attorney urged the court to sustain the petition as pled and to detain the children.

At the conclusion of the hearing (and noting only "three minutes" left in the court day), the trial court indicated it would sustain the petitions with amendments, stating as follows: "There are numerous statements that the father has not controverted, the tone of which in reading them suggests that the petition is entirely true. The petition speaks of control. It speaks of a relationship where the mother does not have certain choices available to her under certain situations. . . .

"It's incredible the level of denial that the court is hearing. While we recognize father is a school teacher, he might be quite concerned with his employment. I would recognize mother has a daycare operation and I'm sure she's concerned about that. We're concerned about it, too. [W]hat we have to do here is recognize that something is terribly wrong here.

"The court will acknowledge that there may be some cultural reasons for those [sic] when you come to this country . . . and men cannot exercise this kind of control over their spouses or their children. It just can't happen. It's not appropriate. . . . I think both

parents need to really understand that all we're asking for is you make a substantial shift so that your children's well-being is absolutely protected.

"They love you. You clearly love them, but the behavior here is just not appropriate. It may have been a one- or two-time incident, but even that is questioned by some of the father's own statements as well as the statements of the mother. [¶] The court is going to sustain the petition. . . ." The father's counsel objected to the "court's references to any kind of cultural implications in this matter."

The court responded: "We have to recognize those. Let's be very real. . . . These are very, very real issues. We can't ignore them. We have to be sensitive because we have to make considerations for them. We are not condemning them. We have to make considerations for them, plain and simple. . . . We are not saying [the parents are] bad in any way, shape or form. We're just saying things have to change."

The following day, the trial court attempted to clarify as follows: "[L]et me restate something in reference to Ms. Carlos['s] objection and recognizing the cultural issues.

"The court is aware that the judicial officers are constantly trained on cultural issues regarding other families in the world. We are trained on these matter[s] and they must be handled differently because the issues are different. The cultural upbringing and rearing of values [sic] of those societies.

"This court recognizes that and the ruling that this court is making is consistent with that.

"We will state at the outset that one of the things we have been trained on consistently regarding families from the other parts of the world, particularly Nigeria and Asian [sic] countries is that parents will obey the orders of the court, that's number one:

"And number two, that there are cultural differences in terms of the roles of women versus men in many of those societies and that is a reflection here in many of the statements that are made by the father and the tone of those statements and the ultimate way in which some of these matters were handled within the family.

“The court recognizes several things about this case that I think are instructive. Number one that both parents have been in obedience of the orders of this court since the inception of the case; [¶] that they have protected the children; that they have gone to the programs and they have done what was expected here. What is troubling about this matter is the testimony of the mother, but for the court’s recognition of some of the cultural issues, this court would probably be following the recommendations of minor[s’] counsel;

“And so counsel[] need to be aware and sensitive to that reality. The parents have been abiding by the orders of the court since October when this case was first filed and that weighs in favor of the parents.

“The testimony was really quite troubling and in situations where we[’]re dealing with persons in this society who were raised in this society, with this society[’s] values and we had that kind of testimony[, minor[s’] counsel[’s] request that the children be detained from the parents in light of that[--]that the children would be at risk with this family, [would be] a totally valid request.

“Weighing that and recognizing what the parents have done to date and recognizing the training that the judicial officers have received regarding persons who are from Nigeria and persons from the African continent in general, quite frankly and the role of women and men in this society[, t]he way in which families treat . . . each other and members within the family[, t]o understand the laws in this society and the laws they must obey and the laws they have been obeying since this case has been filed; [¶] and in recognition of all of that and a review of the documents and evidence produced in court[, t]he court has amended the petitions. . . .” In particular, after striking certain allegations, the court found that on August 22, 2007, the father and mother had engaged in a physical altercation in the child’s presence, and the father had inappropriately disciplined one of the children, endangering the children’s physical and emotional health, safety and well-being.

The court removed the children from the father's custody, permitting them to remain with the mother, and ordered reunification services for the father (with family maintenance services for the mother). The court also ordered conjoint counseling for the mother and father. "The minute . . . order will reflect that both parents have made substantial progress towards eliminating the need for the court's jurisdiction."

The father appeals.

DISCUSSION

The father says he was denied due process at the adjudication hearing because the trial court relied on evidence outside the record which rendered the proceedings fundamentally unfair and requires reversal. We disagree.

Having reviewed the entire record and considering the dependency court's comments in context, we find the father has failed to demonstrate a violation of his constitutional rights. He was represented by counsel and presented his own testimony and evidence; he did not request an opportunity to present further evidence in response to the court's comments. He was not deprived of notice or the opportunity to be heard. (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 258.) Rather, substantial evidence supports the dependency court's orders and the father has failed to demonstrate prejudicial error.

As the court indicated, many of the allegations set forth in the petition remained uncontroverted, and the father's own statements confirmed some of them as well. Moreover, the mother and ten-year-old initially recounted the events in detail (as supported by the police report and neighbor's statements) although they later attempted to minimize and downplay their prior statements, but even then, they both wanted the father to participate in anger management counseling.

To the extent the court's comments referenced matters outside the record, they were made merely as context for the particular *behavior and conduct* which the court found to be inappropriate and, as such, the court's comments were made to explain the

court's decision not to detain the children from the mother's custody. But for the court's recognition of "cultural issues," the court indicated it would have removed the children from the mother's custody as well. The court also referenced cultural issues to emphasize both the mother's and father's obedience of the orders in the proceedings. This record establishes that the children were not detained from the father because the dependency court relied on inappropriate conclusions regarding the father drawn from the court's understanding of "cultural issues," but rather because of the considerable evidence of the father's inappropriate behavior as addressed in the dependency petition. (*In re James C.* (2002) 104 Cal.App.4th 470, 482.)

DISPOSITION

The orders are affirmed.

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WOODS, J.

We concur:

PERLUSS, P.J.

ZELON, J.